

Person with Management or Control  
Northside Community Services Limited  
RE: Harrison Early Childhood Centre

Email: [\[REDACTED\]@northside.asn.au](mailto: [REDACTED]@northside.asn.au)

Dear [REDACTED]

**Decision to issue Administrative Action RE: NOT-40811180**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification of Incident (NOT-40811180) relating to Harrison Early Childhood Centre SE-00009790 (the Service), operated by Northside Community Service Limited PR-00005856 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this decision.

**Facts**

3. On 13 January 2023, the Authority received Notification of Incident (NOT-40811180) from the Provider, advising that on 29 November 2022, a child (aged 2 years) had suffered an allergic reaction during sleep, resulting in the child waking up coughing, vomiting, and requiring antihistamines to be administered. Refer Attachment A
4. Additional information was sought from the Provider identifying that the child was allergic to milk and had been given the incorrect milk formula contributing to the child's illness upon waking.

**Law**

5. Relevant provisions of the Law engaged by the notification are as follows:

**Section 174 of the Law - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to the approved education and care service operated by the approved provider –
  - (c) information in respect of any other prescribed matter.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –
  - (a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 175(2)(c)** provides that, for the purposes of section 174(2)(c) of the Law, the following matter is prescribed –

- c) any circumstance arising at the service that poses a risk to the health safety and wellbeing of a child or children attending the service.

**Regulation 176(2)(c)** provides that for the purposes of section 174 of the Law, a notice must be provided –

- d) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

### **Reasons**

6. Upon considering all information submitted by the Provider for assessment, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 174 of the *Law*.
7. The Authority is satisfied that the Provider has not notified of a prescribed matter within the prescribed timeframe of 7 days as required by Regulation 176(2)(c), which engages a contravention of section 174(4) of the *Law*.
8. Evidence supports that the incident occurred on 29 November 2022 and was not notified within 7 days of the relevant event, being outside of regulated timeframes outlined in Regulation 176(2)(c).
9. In deciding if compliance action should be taken, the Regulatory Authority has taken into account that:
  - a) The Provider did take appropriate steps to ensure educators were aware of expectations to mitigate risk of a similar incident; and
  - b) There have been no similar identified non-compliances in relation to the Service previously.
10. The Authority determined that due to this, the Authority will not be initiating statutory compliance action in this instance. This decision, however, is intended to bring to your attention the need to ensure that all notifiable incidents, complaints, and circumstances, as outlined under the Law and Regulations are notified by the Provider within the regulated timeframes.

### **Legislation**

11. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
12. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.
13. The *Law* and *Regulations* can be viewed at:  
<http://www.acecqa.gov.au/national-law>, and  
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
14. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken, should further breaches of the Law or Regulations be found.

15. If you have any queries regarding this Decision, please contact me at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and care, Regulation and Support  
ACT Education Directorate

8 February 2023